

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

KATE FARMER,

Plaintiff,

vs.

CHATTANOOGA CITY COUNCIL and  
CITY OF CHATTANOOGA

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CASE NO. 1:21-cv-0022

**RESPONSE IN OPPOSITION TO PLAINTIFF'S**  
**MOTION TO REMAND TO STATE COURT**

Come now the Defendants, Chattanooga City Council and the City of Chattanooga, by and through counsel, and respectfully files this Response in Opposition to Plaintiff's Motion to remand to State Court.

Plaintiff cites a case from the First Circuit Court of Appeals for the proposition that absent a direct invocation of a federal right, there can be no implicit finding of federal jurisdiction for a cause of action. See, *Rossello-Gonzalez v. Calderon-Serra*, 398 F.3d 1, 12 (1st Cir. 2004). As an initial matter, it does not appear that the Sixth Circuit has adopted the *Rossello* standard cited by Plaintiff. Instead the Sixth Circuit recognizes that artful pleading cannot deprive a federal court of jurisdiction where the underlying cause of action in reality asserts a due process claim. See, *B&B Trucking, Inc. v. United States Postal Serv.*, 406 F.3d 766 (6th Cir.2005) ("Courts have long applied this sort of "artful pleading" test in many jurisdictional contexts. See, e.g. ... *Shell v. R.W. Sturge, Ltd.*, 55 F.3d 1227, 1231 (6th Cir. 1995) ("We refuse to allow a party's solemn promise to be defeated by artful pleading.");...; see also *B&B Trucking v. USPS*, 363 F.3d 404, 425 (6th Cir. 2004) (Op. of Cook, J., dissenting) ...But see *Rossello-Gonzalez v. Calderon-Serra*, 398 F.3d 1,

12 (1st Cir. 2004) ("We are skeptical of the applicability of the artful pleading doctrine outside of complete federal preemption of a state cause of action."). I see no reason why the artful pleading doctrine ought not be applied here." *B&B Trucking, Inc.*, 406 F. 3d at 771 (concurring opinion).

Based on the holding of *Shell* and as subsequently expounded in *B&B Trucking*, it appears that in the Sixth Circuit, a Federal Court may find jurisdiction even when a pleading is skillfully pled to avoid an express invocation of Federal Rights. Thus, the question for this Court is whether Plaintiff is asserting rights and seeking remedies under Federal law. Plaintiff in her Motion to Remand states that her due process claims are limited to due process under Tennessee state law and internal City of Chattanooga policy. Defendants are willing to accept Plaintiff at face value on this point but for Plaintiff seeking to recover her attorney's fees and costs as part of her lawsuit. (See, Complaint paragraphs 39 and 34 and Prayer for Relief at paragraph 9).

As there is no basis for a recovery of attorney's fees and costs under state law or city policy, Defendants are left with the knowledge that the only basis for a recovery of attorney's fees by Plaintiff would be pursuant to §§ 1983 and 1988 of the United States Code. As a result, the Defendants are well founded in their belief that Plaintiff is asserting a due process claim under Federal Law and therefore jurisdiction is proper in this Court. To the extent that Plaintiff is not making a Federal Due Process claim, she should also be required to strike any demand for attorney's fees and costs as a condition of any remand to state court.

WHEREFORE, Defendants request that this Court deny Plaintiff's Motion to Remand absent Plaintiff striking her claim for attorney's fees and costs in this action.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF CHATTANOOGA, TENNESSEE

By: s/ Joseph A. Kelly  
JOSEPH A. KELLY – BPR #14921  
MELINDA J. FOSTER – BPR #28769  
*Assistant City Attorneys*  
PHILLIP A. NOBLETT – BPR # 10074  
*City Attorney*  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 643-8250 (Telephone)  
  
(423) 643-8255 (Facsimile)

GEARHISER, PETERS, ELLIOTT & CANNON, PLLC

By: s/ Sam D. Elliott  
SAM D. ELLIOTT – BPR #09431  
320 McCallie Avenue  
Chattanooga, TN 37402  
(423) 756-5171  
  
*Attorneys for Defendants Chattanooga City Council and  
City of Chattanooga*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading by depositing same in the United States mail, postage prepaid, and addressed to the following:

Janie Parks Varnell  
DAVIS & HOSS, P.C.  
850 Fort Wood Street  
Chattanooga, Tennessee 37403

This 5<sup>th</sup> day of March, 2021.

s/ Phillip A. Noblett  
\_\_\_\_\_  
PHILLIP A. NOBLETT

City of Chattanooga, Tennessee  
Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 643-8250  
(423) 643-8255 - Fax  
pnoblett@chattanooga.gov